

ADMINISTRATIVE INTERNAL USE ONLY

13 April 1973

MEMORANDUM FOR THE RECORD

SUBJECT: Legislation to Require Disclosure to Congress and the Public

PROBLEM

1. Several bills have been submitted in Congress to require the disclosure of information to the Congress and the public. Congressional requests are to be met notwithstanding classification and in requests from the public, material exempted on the grounds of classification is subject to court review. The bills would include all classified information regardless of sensitivity (including sources and methods).

DISCUSSION

2. One group of bills would amend the Freedom of Information Act and overrule the court decision in the case of Representative Patsy Mink, which denied court review of classified material exempt under the act. These bills are as follows:

S. 1142 - Senator Muskie

H. R. 4960 - Representative Horton

H. R. 5425 - Representative Moorhead

H. R. 4938, introduced by Representative Erlenborn, would require disclosure to Congress unless executive privilege is invoked and this is defined as "policy recommendations." H. R. 5425 requires an agency to furnish any information to a committee of Congress upon request.

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3. S. J. Res 72, introduced by Senator Ervin, provides that if an officer or employee of an agency refuses to furnish information to a congressional committee for any reason (including executive privilege with which the Congress disagrees), then the Congress may determine whatever action it deems necessary.

4. S. 858, introduced by Senator Fulbright, amending Title 5 (not Freedom of Information Act), provides that if an agency denies information to Congress and the President does not invoke executive privilege, then that agency's funds will be cut off until the information is provided.

5. Intelligence estimates may be covered under executive privilege if the President were to extend this coverage, but this is open to legal debate. Further, the countless lesser intelligence reports, encyclopedic, analytic and operational, would not be included in this blanket protection. The only other grounds for denial would be the Director's statutory responsibility to protect intelligence sources and methods from unauthorized disclosure. This again is a matter of legal determination.

6. The chances of Congress passing some form of bill appear good especially if the debate gets hotter forcing the Congress to take a firm stand. Recognizing that the bills are highly political and a result of the executive-legislative power struggle, it is very likely that the President may not compromise the issue and veto the bills if passed. Knowledge of the White House position would be most important to determine Agency strategy. A discussion of the bills at a LIG meeting would hopefully surface this position. If the Director must protect his responsibility, he should speak as head of the intelligence community and coordinate the matter through the USIB.

#### STATUS OF BILLS

7. Hearings have been held on H. R. 4938 by the Subcommittee on Foreign Operations and Government Information of the House Government Operations Committee.

8. Hearings have begun on S. 1142, S. J. Res 72 and S. 858 jointly before Subcommittees of the Senate Judiciary and Government Operations Committees

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COURSE OF ACTION

A. Seek legal judgment from OGC as to effect upon Director's statutory responsibility.

B. Suggest the bills for discussion at a LIG meeting to determine White House position and Executive strategy.

C. Suggest that the Director present this matter to the USIB for a coordinated USIB position if the community is considered to be seriously affected.



Assistant Legislative Counsel

STATINTL

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